U.S. news

THE WALL STREET JOURNAL.
WSJ.com

MARCH 29, 2010, 6:04 PM ET

One Law Firm That's Very McKool on Contingency-Fee Work

The leaders of the nation's largest law firms didn't get to where they are by happy accident. Not only have many of them spent years as successful lawyers and developed the work-the-room shmooziness of politicians and university presidents. They also spend every waking hour thinking about one thing: making their firms more profitable.

So our question to them is this: If profitability is your thing, why haven't you taken a page from the books of Wiley Rein, Dickstein Shapiro and McKool Smith and at least dabbled in handling work for plaintiffs, work that can pay off big if you're successful?

Sure, there are risks. Still, you've seen how it can go. In the early part of the aughts, Dickstein Shapiro brought home a bundle handling contingency fee work for plaintiffs in antitrust litigation. In 2006, Wiley Rein made silly money representing a company called NTP in patent litigation with RIM, the maker of the BlackBerry.

And that brings us to McKool Smith. In the last year, the firm has brought home nearly $400 million for plaintiffs in two patent suits against one company — Microsoft. And it just filed the third. Click here for the story, from the Dallas Morning News.

In fact, in the last four years, McKool Smith's contingency fees have exceeded $100 million, according to the story.

Name partner Mike McKool (pictured) admits that his firm follows a tricky business model — supplementing bill-by-the-hour defense work with risky plaintiff-side contingency fee work.

"It's scary, but we've managed so far to meld a traditional hourly fee practice with blue chip clients like American Airlines, Medtronic, Exxon Mobil and still do a contingent-fee business," said McKool to the Morning News.

In order to make it work, McKool's got to pony up some of its own money. McKool says the firm "routinely" ponies up $10 million in unbillable work before it sees a dime back. Still, the strategy has paid off handsomely for McKool and Phil Smith, who launched the firm in 1991.

Sooooo, any takers on the strategy? We think it might work for a mid-sized litigation shop looking to boost their technology/IP work significantly. For one thing, those firms might be less likely to have clients that would make too much of a fuss if the firm started dabbling in plaintiff-side work. Bring over some hot-shot lateral-hires, lodge some complaints. Whaddya think?

Copyright 2008 Dow Jones & Company, Inc. All Rights Reserved
This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our Subscriber Agreement and by copyright law.
For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit
www.djreprints.com